U.S. Department of Labor

Office of Administrative Law Judges
St. Tammy Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, Louisiana 70433

(985) 809-5173
(985) 893-7351 (FAX)

Issue Date: 16 January 2007

CASE NO.: 2005-LHC-2455

OWCP NO.: 07-170677

IN THE MATTER OF

F.M.,
Claimant (Decedent)

v.

UNIVERSAL COMPRESSION, INC.,
Employer

APPEARANCES:

George J. Nalley, Jr., Esq.,
On behalf of Claimant

Richard S. Vale,, Esq.,
On behalf of Employer

Before: Clement J. Kennington
Administrative Law Judge

DECISION AND ORDER DENYING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, *et. seq*., (2000) brought by F.M. (Claimant/Decedent) against Universal Compression, Inc., (Employer). The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on September 20, 2006 in Covington, Louisiana.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant's wife (S.M.) testified and introduced 2 exhibits which were admitted, including DOL forms LS-262 with attachments and U.S. Coast Guard records concerning Claimant's medical treatment and transportation from W & T offshore platform on June 4, 2003.[1] Employer introduced 19 exhibits which were admitted including various DOL forms (LS-201, 202, 207, 280); Claimant's personnel and payroll records; medical records of Drs. Jack Hurst, David Baker, Robert Bode, James Wade, Edgar Feinberg and Lawrence P. O'Meallie; medical records of Terrebonne General Medical Center, Lafayette General Medical Center; petition and denial of Section 8(f) relief; depositions of Dr. Donald Gervais, Claimant, Dr. O'Malley, and Universal Compression.

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced my observation of the witness demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

I. STIPULATIONS

At the commencement of the hearing the parties stipulated and I find:

1. On June 4, 2003, while stationed on an offshore oil rig, Claimant suffered a stroke.

2. At the time of injury there existed an Employer/Employee relationship.

3. Employer was advised of the injury on June 4, 2003.

4. Employer filed a Notice of Controversion on June 25, 2004.

5. An informal conference was held on June 5, 2005.

6. Claimant's average weekly wage at the time of injury was $1,467.78.

II. ISSUES

The following unresolved issues were presented by the parties:

1. Whether Claimant's widow and children are entitled to death benefits under the Act.

2. Medical causation.

[1] References to the transcript and exhibits are as follows: trial transcript- Tr.___; Claimant's exhibits-CX-___, p.___; Employer exhibits-EX-___, p.___; Administrative Law Judge exhibits-ALJX-___; p.___.

3. Attorney's fees and costs.

III. STATEMENT OF THE CASE

A. Claimant Widow's Testimony:

Many of the underlying facts of this case with the exception of Claimant's time of arrival at Terrebonne General Medical Center are uncontested. Claimant met S.M. in 1977 and married her in 1978. Prior to working for Employer Claimant worked as an auto mechanic and shop owner managing a crew and working both on and off shore.

Claimant and S.M. had 5 children 3 of which are surviving: Claimant's daughter No. 1 (27 years old,), Claimant's daughter No. 2 (23 years old, born on January 5, 1983) and Claimant's daughter No. 3 (17 years old, born on July 14, 1989) (CX-1). At the time of Claimant's death Claimant's daughter No. 1, was a high school graduate, living independently and working, but receiving financial support from Claimant. In September, 2003, she began college at U.L.L where she has remained as a full time student. (Tr. 28, 29). Claimant's daughter No. 2, was 20 years old, working and living alone at Claimant's death, Claimant's daughter No. 3, was 13 years old , living with and dependent upon Claimant when he died. (Tr. 30, 46).

In 1992, Claimant underwent brain surgery for a brain abscess and later in the same year had a heart valve replacement. Despite these medical problems Claimant exhibited no physical limitations building his own house in 1998 and performing medium to heavy level work for Employer as a compressor mechanic carrying two tool bags weighing up to 50 pounds a piece (Tr. 38). Although advised about the necessity for monitoring and taking adequate levels of coumadin for his heart condition Claimant was non compliant. (Tr. 31-35, 47-50; EX-17, pp. 14,-18).

When hired by Employer Claimant worked initially in a shop located in Broussard, Louisiana. (Tr. 21-26). About 6 weeks before his death Claimant went off shore for Employer in order to work more hours and increase his earnings. (Tr. 37). On June 4, 2006, at about 11 am. Claimant's supervisor telephoned S.M. informing her that her husband had an accident and had been taken to Terrebonne Hospital. Later that day she learned he had fallen from a top bunk, hit his head at about 7 am and due to fog conditions had his hospital helicopter transport delayed. (Tr. 38-42). Claimant lived 17.2 miles from the hospital which by car was a 23 minute ride. (Tr. 43). Employer's shop was 5 ½ miles or 10 to 15 minutes by car from the hospital. (Tr. 44).

B. Testimony of Dr. Donald S. Gervais and Dr. Lawrence O'Meallie

Dr. Gervais, a board certified neurologist, testified that on June 4, 2003 he was called by Drs. Russell Henry, and Tom Jackson to evaluate Claimant' condition. Claimant had a history of a brain abscess, and a mechanical heart valve for which he was anti-coagulated. Upon arrival Claimant underwent imaging which revealed a large middle cerebral artery infarct or stroke with significant edema. Claimant was immediately anti-coagulated because he was prone to develop

thrombi or clots due to his mechanical heart valve. (EX-16, pp. 7, 8). Claimant had low coumadin levels suggesting questionable compliance, inadequate dosing or dietary indiscretions. (Id. at 10). Claimant died of a cerebral herniation caused by a right middle cerebral artery embolic infarct or clot due to a mechanical valvular thrombosis. (Id. at 12). Claimant developed a stroke or infarct due to low INR or coumadin levels. (Id. at 15, 16). Claimant's stroke was not related to his activity or the fall from the bunk. (Id. at 19, 20).

Dr. Gervais testified that if he had arrived at the hospital within 3 hours of the stroke, he could have received a blood thinner, TPA. Arrival after 3 hours makes the use of other blood thinners much less effective. However, once the brain shows ischemic changes as Claimant did that "brain is dead." (Id. at 21). Statistically however, only 13 out of 100 patients who are treated for an ischemic infarct or stroke within 3 hours by TPA do better neurologically. (Id. at 24). Dr. Gervais testified to a medically probability Claimant's condition would have remained the same even if he had arrived at the hospital earlier even though the chances of recovery improve with earlier treatment. (Id. at 26, 32).

Dr. O' Meallie, a cardiologist, who reviewed Claimant's medical records, testified Claimant died from congenital heart complications. Claimant had an aortic valve replacement requiring anticoagulant therapy without which clots can form spontaneously. Claimant was supposed to take coumadin but unfortunately he was non-compliant in taking and monitoring drug levels. (EX-19, pp. 6-9). Due to his non-compliance Claimant had a thromboltic stroke. Claimant's stroke was not related to work activity. (Id. at 11). Had Claimant been evacuated from the work site within an hour he probably would have died in any event. (Id. at 12). There is no way to know with any medical certainty about Claimant's chances of recovery had he been in a different locale and received prompt medical treatment. (Id. at 29). Stress, anxiety, or physical activity played no part in Claimant's clot development. (Id. at 31). The chances of recovery are greater the quicker treatment is provided. (Id. at 32). However, even if Claimant had his stroke on land it was more probable than not, he would not have survived. (Id. at 33, 44). Claimant's non-compliance killed him. (Id. at 37; EX-13).

C. Testimony of Employer Representatives Richard William Klein and Lloyd G. Lewis

Lewis, Employer's Regional Manager for South Louisiana and the Gulf of Mexico, testified that Employer is in the gas compression rental business providing after market services or maintenance work on customer owned gas compressors including installation, preventive maintenance, and removal. (EX-18, p. 10, 23). Lewis supervised Claimant who was an experienced mechanic. (Id. at 17). Prior to his employment with Employer, Claimant worked for IEW, a small company located in Lafayette, Louisiana which Employer purchased. Initially Claimant worked in Employer's shop and then relocated to offshore, fixed platforms. (Id. at 24). Claimant was transported to platforms via boat or helicopter. (Id. at 28). As a compression mechanic he stayed on the rig working on an on-call basis with sleeping accommodations provided by the customer. Employer rated Claimant a very good mechanic with no known physical limitations. (Id. at 29).

At the time of his stroke Claimant was assigned to do preventive maintenance on South Timbalier 190.

Klein, Employer's director of human resources, testified that when Employer purchased IEW it retained the majority of their employees without requiring physicals or examinations. (Id. at 20). Klein testified that on June 2, 2003 Claimant attended a safety meeting and picked up some parts. On June 3, 2003 Claimant went to the rig and began preventive maintenance and on June 4, 2003 worked from 6 am to 6 pm. (Id. at 35-40). Employer discovered Claimant on the floor at 5:30 am in an incoherent state with a loss of feeling in one arm. The customer called the helicopter service to medivac Claimant. (Id. at 44-47). [2]

D. Claimant' Medical Records

A review of Claimant's medical records showed Claimant undergoing brain surgery for a resection of a brain abscess on July 17, 1992, at Lafayette General Medical Center. Dr. Hurst performed the surgery and provided follow up care. On October 12, 1992, Claimant underwent a right and left heart catheterization followed up on October 14, 1992 with an aortic valve replacement by Dr. Feinberg after which Claimant was placed on Coumadin, Persantine, Lanoxin, and Trinsicon. On December 4, 2002 Claimant was readmitted and treated for gastroesophageal reflux. (EX-6, 10). On March 20, 2001, Claimant had an acute appendicitis and underwent an appendectomy performed by Dr. Wade. (EX-7, p. 2; EX-9, p. 5). Upon admission Claimant was found to be on subtherapeutic Coumadin levels and had not seen his cardiologist in three years. (EX-9, pp. 6, 11).

On June 4, 2003 at 3:29 pm Claimant was admitted at Terrebonne General Medical Center for an intracranial hemorrhage and stroke with infarct. (EX-11, p. 6). Claimant presented with an INR of 1.3 and a large hemisphere stroke. (Id. at 23). Claimant died on June 8, 2003 with a final diagnosis of right hemisphere stroke, intracranial hypertension with uncal herniation having undergone subclavian IV, intubation and ventilation and left femoral arterial line placement and a CT scan revealing an acute right middle cerebral artery infarct with cerebral edema. (Id. at 65, 93, 99).

IV. DISCUSSION

A. Parties Contention

Claimant's counsel seeks death benefits Claimant's widow and 2 younger daughters (Claimant's daughter No. 2 and No. 3) contending: (1) there is a 3 hour window of opportunity

[2] Coast guard reports of June 4, 2003 show Claimant collapsing at 1300 from an apparent heart attack, Claimant was conscious but incoherent and completely paralyzed on the left side. Civilian helicopters were unable to respond due to onshore fog. The coast guard helicopter responded, landed on the rig at 1730 and delivered Claimant to Terrebonne General Hospital in stable condition about 45 minutes later. (CX-2).

to successfully treat stroke victims such as himself per the testimony of Dr. Gervais; (2) due to the offshore location of the job site and bad weather conditions (fog), Claimant's hospital transport was delayed more than 3 hours from the time he was discovered (5:30 am) until the Coast Guard delivered him to the hospital (10 am); (3) working off shore exposed Claimant to a "zone of special danger" (helicopter crash; crew boat capsizing, risk of bodily harm being transferred to and from rigs by crewboats and overhead cranes, lack of ready access to hospitals due to offshore location versus short distances from Employer's shop [10 to 15] to near by hospital); (4) regardless of Claimant's lack of medication compliance, once a clot develops, the sooner the clot can be treated the better are Claimant's changes of survival.

Claimant's counsel contends this case presents two fundamental issues: did the conditions of Claimant's employment on the rig in South Timbilier 180 constitute a "zone of special danger" giving rise to a Section 20(a) presumption that Claimant's death arouse out of and in the course of his employ, and if so was that presumption rebutted by testimony. Claimant argues the concept of "zone of special danger" has been applied in many instances in foreign or remote location and should be applied here citing *Latsis v. Chandris, Inc.,* 35 BRB 603 (2001) wherein the Board found an engineering suffering a retinal detachment who was deprived of proper and timely medical treatment due to his work on a vessel entitled to compensation because his job bound him to inadequate service of the ship's doctor resulting in a 75% loss of vision in the right eye). Claimant also cites *Ford Aerospace and Communications Corp., v. Boling,* 684 F. 2d 640(9th Cir 1982) for the application of "zone of special danger" and entitlement wherein where a decedent in Thule, Greenland was required to walk a distance of 20 to 40 feet to get a stretcher while in the throes of a myocardial infarction finding the conditions of employment increased the size of the infarction while decreasing changes of survival. Claimant argues that he only has to show conditions of work that could have aggravated a pre-existing condition for compensation. (*See Stevens v. Tacoma Boatbuilding, Co.,* 23 BRBS 191, 193 (1990); *Friend v. Britton,* 220 F. 2d 820 (CADC, 1955).

In a reply brief (which was not authorized) Claimant asserts that the Supreme Court in *OLeary v. Brown-Pacific-Maxon,* 340 U.S. 504 at 506 and 507 (1951) expanded the concept of "zone of special danger" to all Longshore cases when it said (citations omitted)

> The Longshoremen's and Harbor Workers' Act authorizes payment of compensation for 'accidental injury or death arising out of or in the course of employment'. Workmen's compensation is not confined by common-law conceptions of scope of employment. The test of recovery is not a causal relation between the nature of employment of the injured person and the accident. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer. All that is required is that the 'obligations or conditions' of employment create the "zone of special danger' out of which the injury arose.

Claimant also cites *Preskey v. Cargill*, 12 BRBS 917 (1980) which was reversed by the 9th Circuit at 14 BRBS 340 (1981); *Lazzari v. Matson Navigation Co.,* 29 BRBS 520 (1995) in support of application of "zone of special danger."

On the other hand Employer contends: (1) the time of Claimant's stroke is unknown; (2) when discovered Claimant was immediately taken to the hospital when weather permitted arriving at the hospital a 10:28 am; (3) Claimant's stroke was caused by a blood clot which formed on Claimant's artificial valve and traveled to his brain due to his failure to take and monitor appropriate amounts of an anti-coagulant, coumadin; (4) Claimant's stroke had nothing to do with his work activity; (5) had Claimant been evacuated within an hour or two of the stroke it is unlikely Claimant would have lived; (6) even if Claimant had been located on land and able to get more prompt treatment there is no way to tell with any medical certainty the degree of his disability or whether he would have survived; (7) it was highly unlikely that Claimant would have survived even if he had been treated earlier; (8) only 13 out of 100 patients who suffer strokes like Claimant's do better neurologically if they receive TPA within the first 3 hours; and (9) even if Claimant received ideal treatment he had less than a 50% chance of survival.

Employer argues that the Board has consistently ruled the "zone of special danger" doctrine applies only in Defense Base Act and District of Columbia Workers' Compensation Act and not claims arising under the Longshore Act as the present case citing *Compton v. Avondale Industries,* 33 BRBS 174 (1999); *McConnell v. Bethlehem Steel Corp.,* 25 BRBS 1 (1991); *Harris v. Eglin Air Force Base,* 23 BRBS 175 (1990); *Cantrell v. Base Restaurant,* 22 BRBS 372 (1989). Employer argues that *O'Leary v. Brown-Pacific-Maxon,* 340 U.S. 504 (1951) was a Defense Base Act case and does not stand for the proposition that the "zone of special danger" applies to Longshore claims. Claimant failed to meet the requirements for a Section 20(a) presumption to apply and even if Claimant met the requirement Employer rebutted the presumption leaving Claimant with the burden of showing by a preponderance of evidence that work conditions either, caused, aggravated, or could have caused, aggravated or accelerated Claimant's death which it failed to do.

B. Credibility of Parties

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5th Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5th Cir. 1998); *Atlantic Marine, Inc., v. Bruce*, 551 F.2d 898, 900 (5th Cir. 1981); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence based on the record as a whole. *Banks*, 390 U.S. at 467; *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991); *Huff v. Mike Fink Restaurant, Benson's Inc.*, 33 BRBS 179, 183 (1999).

In this case witness credibility does not appear to be an issue insofar as both the medical and lay witness testimony appears generally to be straightforward and generally accurate except with the time of arrival at Terrebonne General Medical Center. Having reviewed all records it appears from Coast Guard and Terrebonne General Medical Center records that Claimant arrived

at the hospital at about 3:29 pm on June 4, 2003. However, as a practical matter whether Claimant arrived at 10:30 am or 3:29 pm either time was beyond the time for effective administering of anti-coagulants.

C. Causation

To establish a *prima facie* claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing that: (1) the claimant sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused, aggravated, or accelerated the harm or pain. *Port Cooper/T. Smith Stevedoring Co., Inc., v. Hunter*, 227 F.3d 285, 287 (5th Cir. 2000); *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128, 129 (1984). Once this *prima facie* case is established, a presumption is created under Section 20(a) that the employee's injury or death arose out of employment. *Hunter*, 227 F.3d at 287. The mere existence of a physical impairment is plainly insufficient to shift the burden of proof to the employer. *U.S. Industries/Federal Sheet Metal Inc., v. Director, OWCP*, 455 U.S. 608, 615, 102 S. Ct. 1312, 71 L. Ed. 2d 495 (1982). *See also Bludworth Shipyard Inc., v. Lira*, 700 F.2d 1046, 1049 (5th Cir. 1983) (stating that a claimant must allege an injury arising out of and in the course and scope of employment); *Devine v. Atlantic Container Lines*, 25 BRBS 15, 19 (1990) (finding the mere existence of an injury is insufficient to shift the burden of proof to the employer and a *prima facie* case must be established before a claimant can take advantage of the presumption). Once both elements of the *prima facie* case are established, a presumption is created under Section 20(a) that the employee's injury or death arose out of employment. *Hunter*, 227 F.3d 287-88.

In order to show harm or injury a claimant must show that something has gone wrong with the human frame *Crawford v. Director, OWCP*, 932 F.2d 152, 154 (2nd Cir. 1991); *Wheatley v. Adler*, 407 F.2d 307, 311-12 (D.C. Cir. 1968); *Southern Stevedoring Corp., v. Henderson*, 175 F.2d. 863, 866 (5th Cir. 1949). An injury cannot be found absent some work-related accident, exposure, event or episode, and while a claimant's injury need not be caused by an external force, something still must go wrong within the human frame *Adkins v. Safeway Stores, Inc.*, 6 BRBS 513, 517 (1978). Under the aggravation rule, an entire disability is compensable if a work related injury aggravates, accelerates, or combines with a prior condition. *Gooden v. Director, OWCP*, 135 F.3d 1066, 1069 (5th Cir. 1998) (pre-existing heart disease); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 119(1995)(pre-existing back injuries.

In order to show the second requirement of a *prima facie* claim, a claimant is not required to introduce affirmative medical evidence establishing that working conditions caused the harm. Rather a claimant must show the existence of working conditions that could conceivably cause the harm alleged beyond a mere fancy or wisp of what might have been *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968).

In establishing a causal connection between the injury and claimant's work, the Act should be liberally applied in favor of the injured worker in accordance with its remedial purpose. *Staffex Staffing v. Director, OWCP*, 237 F.3d 404, 406 (5th Cir. 2000), *on reh'g*, 237 F.3d 409 (5th Cir. 2000); *Morehead Marine Services, Inc., v. Washnock*, 135 F.3d 366, 371 (6th

Cir. 1998)(*quoting Brown v. ITT/Continental Baking Co.*, 921 F.2d 289, 295 (D.C. Cir. 1990)); *Wright v. Connolly-Pacific Co.*, 25 BRBS 161, 168 (1991). Ordinarily the claimant bears the burden of proof as a proponent of a rule or order 5 U.S.C. § 556(d) (2002). By express statute, however, the Act presumes a claim comes within the provisions of the Act in the absence of substantial evidence to the contrary 33 U.S.C. § 920(a) (2003). Should the employer carry its burden of production and present substantial evidence to the contrary, the claimant maintains the ultimate burden of persuasion by a preponderance of the evidence under the Administrative Procedures Act 5 U.S.C. 556(d) (2002); *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 281 (1994); *American Grain Trimmers, Inc., v. Director, OWCP*, 181 F.3d 810, 816-17 (7th Cir. 1999).

Once the presumption in Section 20(a) is invoked, the burden shifts to the employer to rebut it through facts not mere speculation that the harm was not work-related. *Conoco, Inc., v. Director, OWCP*, 194 F.3d 684, 687-88 (5th Cir. 1999). Thus, once the presumption applies, the relevant inquiry is whether the employer has succeeded in establishing the lack of a causal nexus. *Gooden v. Director, OWCP*, 135 F.3d 1066, 1068 (5th Cir. 1998); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 89-90 (1995) (failing to rebut presumption through medical evidence that claimant suffered an prior, unquantifiable hearing loss); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144-45 (1990) (finding testimony of a discredited doctor insufficient to rebut the presumption); *Dower v. General Dynamics Corp*., 14 BRBS 324, 326-28 (1981) (finding a physician's opinion based of a misreading of a medical table insufficient to rebut the presumption). The Fifth Circuit further elaborated:

> To rebut this presumption of causation, the employer was required to present substantial evidence that the injury was not caused by the employment. When an employer offers sufficient evidence to rebut the presumption--the kind of evidence a reasonable mind might accept as adequate to support a conclusion--only then is the presumption overcome; once the presumption is rebutted it no longer affects the outcome of the case.

Noble Drilling v. Drake, 795 F.2d 478, 481 (5th Cir. 1986) (emphasis in original) , *See also, Ortco Contractors, Inc., v. Charpentier,* 332 F.3d 283, 290 (5th Cir. 2003) *cert. denied* 124 S. Ct. 825 (Dec. 1, 2003) (stating that the requirement is less demanding than the preponderance of the evidence standard); *Conoco, Inc.*, 194 F.3d at 690 (stating that the hurdle is far lower than a "ruling out" standard); *Stevens v. Todd Pacific Shipyards Corp.*, 14 BRBS 626, 628 (1982), aff'd. mem., 722 F.2d 747 (9th Cir. 1983) (stating that the employer need only introduce medical testimony or other evidence controverting the existence of a causal relationship and need not necessarily prove another agency of causation to rebut the presumption of Section 20(a) of the Act); *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995)(stating that the unequivocal testimony of a physician that no relationship exists between the injury and claimant's employment is sufficient to rebut the presumption.

If the presumption is rebutted, it no longer controls and the record as a whole must be evaluated to determine the issue of causation *Del Vecchio v. Bowers*, 296 U.S. 280, 286-87 (1935); *Port Cooper/T Smith Stevedoring Co., v. Hunter*, 227 F.3d 285, 288 (5th Cir. 2000); *Holmes v. Universal Maritime Serv. Corp*., 29 BRBS 18, 20 (1995). In such cases, I must weigh

all of the evidence relevant to the causation issue. If the record evidence is evenly balanced, then the employer must prevail. *Director, OWCP, v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

In this case Claimant showed an injury while at work thus satisfying the first element of a *prima facie* case. Claimant also showed a delay in hospital transit and thus conditions which could have resulted in his death. However, Employer presented credible medical evidence through the testimony of Drs. Gervais and O'Meallie showing that work or working conditions played no part in causing or accelerating his death. Rather his death was caused by his failure to take blood thinning medications which lead to clot formation, a cerebral stroke and death. Thus, Employer rebutted the second element of a *prima facie* that working conditions caused or could have caused Claimant's death requiring a weighing of the entire record.

In weighing the entire record, I am convinced by a preponderance of credible evidence that the sole cause of Claimant's death was due to his medication non-compliance and had nothing to do with working. While Claimant's earlier arrival at the hospital would have improved his chances of survival, there is no way to determine with exact medical certainty Claimant's chances of recovery under optimum condition. It appears however, such improvement was minimal at best and probably no better than 13% or 13 out of 100. In all probability Claimant would have died in any event even if he had he been on land. Thus, I find that Claimant has not established his case for compensation.

Regarding use of the doctrine of "zone of special danger" Employer is correct is his contention that the Board has not applied this doctrine to Longshore cases but rather has confined it to Defense Base Act and D.C. Workers' Compensation cases. The rationale for such restricted application is unclear as it appears the Supreme Court in *O'Leary* provided for a more expansive application. However even if that doctrine is applied in the present case, the dangers of offshore work did not contribute to Claimant's death and in all probability he would have died due to the massive nature of the stroke had he been ashore. Thus, applying the "zone of special danger" to this case I find Claimant counsel failed to prove by a preponderance of credible evidence that Claimant's conditions of employment created any "zone of special danger" which contributed in any way to his death. As such I find no merit in the instant claim.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I find Claimant failed to establish a *prima facie* case of compensation by a preponderance of credible evidence, and thus, I must deny death benefits.

A

CLEMENT J. KENNINGTON
Administrative Law Judge